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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 734

MARCO REGINELLI,

Petitioner,

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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The petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New Jersey reversing a judgment of the County Court of Atlantic City granting petitioner American citizenship.

Opinions Below

The opinion of the Supreme Court of New Jersey is reported at 119 A. 2d 454, and is set forth at page 24 of the Appendix herein. The opinion of the County Court of Atlantic City is reported at 116 A. 2d 214, 36 N. J. Super. 455, and is set forth at page 14 of the Appendix herein.

Jurisdiction

The judgment of the Supreme Court of the State of New Jersey was entered on January 3, 1956. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

Questions Presented

1. Do state appellate courts have unqualified and greater powers to set aside judgments of naturalization than federal courts of appeal, and if they do, are such powers consistent with the Constitutional provisions limiting Congress to the establishment of a uniform rule of naturalization?

2. Where citizenship has been granted to an alien by a state trial court, may a state appellate court set aside such judgment by review of the facts upon the ground that it would reach a different result or must it be established that an error of law has been committed?

3. Where citizenship has been granted to an alien by a state trial court, may a state appellate court set aside such judgment in the absence of clear and convincing evidence that citizenship was erroneously granted?

4. May a state appellate court reverse a trial court's judgment granting an alien American citizenship by reviewing matters of fact and without giving appropriate weight to the discretion and findings of the trial court?

5. Under the Nationality Act of 1940 which requires five years good moral character, is an alien's conduct outside the five year period material in determining his qualifications?

Constitutional and Statutory Provisions Involved

Article I, Section 8, Clause 4 of the Constitution provides:

> "The Congress shall have power . . . to establish an uniform Rule of Naturalization . . ."

Section 301(a) of the Nationality Act of 1940 (8 U.S.C. 701(a); 54 Stat. 1140) provides:

"Exclusive jurisdiction to naturalize persons as citizens of the United States is hereby conferred upon the following specified courts: District Courts of the United States now existing . . . Also all courts of record in any State or Territory now existing . . . having a seal, a clerk, and jurisdiction in actions at law or equity . . . in which the amount in controversy is unlimited."

Section 307 of the Nationality Act of 1940 (8 U.S.C. 707; 54 Stat. 1142) provides in pertinent part:

"(a) No person . . . shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years . . . and (3) during all of the periods referred to in this subsection has been and still is a person of good moral character. . . ."

Statement

Petitioner, Marco Reginelli, a native of Italy and unmarried (R. 1a), came to the United States for permanent residence on June 4, 1914, and has never left the United States since then (R. 9a). Prior to 1942 he was convicted on five occasions. His record consists of a 1920 fine for a liquor violation, a 1924 fine for indulging in a suspicious card game, a 1933 fine for aiding in a lottery, a 1926 sentence for a year for fraudulent conversion, and a six month sentence for violation of the Mann Act (R. 62a-63a).

Since 1942 there has been no arrest record concerning Reginelli (R. 63a, 71a). It is undisputed, and the Naturalization Examiner of the Immigration Service so found, that there is no evidence "other than hearsay or rumor connecting petitioner with any illegal business within the statutory period" (R. 71a, Finding g).

(A) *Proceedings Before the Naturalization Examiner and in the Trial Court*

After petitioner filed his application for naturalization in the court below on September 23, 1952 (R. 3a), both he (R. 6a) and his witnesses (R. 104a) testified under oath before a naturalization examiner in 1953, pursuant to 8 Code of Federal Regulations 373.1 (1949 Ed.).[1] The two witnesses certified to petitioner's good moral character during the past five years (R. 4a, 104). Petitioner testified that his income was derived from the Forest Products Company, a plastic concern, from rents, from Government bonds, and from wagers placed at various race tracks (R. 30a-35a). Petitioner's income tax returns for five years were submitted to the Immigration and Naturalization Service for examination (R. 31a, 32a). There is no dispute that he disclosed his race-track winnings in these returns. He testified below that the approximate range of his bets was sometimes $50 to $300 and sometimes in the thousands (R. 34a-35a). When asked to name a horse upon whom he had bet successfully, the place, and the amount, petitioner stated that he would bring the race track programs which he had at home indicating this information. Petitioner was requested to give them to his attorney, then Mr. Di Bona, or mail them in (R. 35a). This was in 1953 (R. 6a). Thereafter deportation proceedings were instituted against petitioner, and the naturalization proceedings were stayed until the deportation warrant was dismissed. Mr. Di Bona was replaced by Mr. Schofield as attorney, and the naturalization proceeding was resumed in 1955 when findings were made by the naturalization examiner (R. 87a, 88a, 72a). The naturalization examiner, however, had stated that his findings would not be made

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[1] The present application filed prior to the effective date of the Immigration and Nationality Act of 1952, is controlled by the 1940 Nationality Act. *United States* v. *Menasche*, 348 U.S. 528 (1955).

until the race track programs had been submitted (R. 60a). In the confusion caused by the intervening deportation proceedings, the lapse of two years, the change of attorneys, and the representation that no findings would be made until the race track programs were submitted, these programs were not submitted (R. 87a).

The findings of the naturalization examiner submitted to the Court below recommending denial of the petitioner's application were based upon his poor reputation and his failure to adequately explain his annual income and the unsupported conclusion that petitioner's income was derived from illegal sources (R. 71a, 72a; Findings of Fact e, g, j, k).

At the trial below the naturalization examiner admitted that petitioner had not been in any difficulty during the last five years and that he was currently leading a quiet life (R. 74a). An unsuccessful attempt was made to introduce newspaper clippings to prove petitioner's alleged bad reputation (R. 75a-76a). The naturalization examiner conceded that the sole issue was whether petitioner's statements as to his income from race track wagers were credible (R. 81a-82a, 90a). All other objections were specifically waived (R. 82a).

The trial court in its written opinion held (R. 100a);

> "The itemized list of arrests end in 1942. The itemized list of 1953 newspaper references resulted from deportation proceedings instituted at that time against petitioner and reflect a prior reputation rather than a current one.
>
> "A search of the entire brief does not contain a scintilla of actual or real evidence that the petitioner, since 1942, has engaged in any illegal enterprise or been involved in any misconduct of the type that creates his former bad reputation. In fact, the government submits that since 1942 there has been no arrest

record, and that he is apparently living in a very quiet manner, and that any conclusions by the government regarding illegal gambling, etc., are the result of rumor and hearsay. It would appear that the investigative facilities available to the service most certainly would have revealed any misconduct of this petitioner who, evidently, has been the object of very close scrutiny since 1942. In the absence of actual proof it would be a miscarriage of justice to resort to rumor and hearsay or even unsupported circumstantial evidence to create a present bad reputation and poor moral character on one acquired some years prior to the statutory period in this matter."

The trial court found further that (R. 93a, 105a):

"* * * not a shred of evidence has been produced to support a conclusion that this man is withholding necessary information from the Government and from this Court.

* * * * * * *

"The petitioner has claimed, under oath, that the difference between his listed income and income tax declaration has been made from wagering on horses at the various race tracks. The Federal Examiner contends that this is incredible and not worthy of belief, and that this Court should assume that the difference in the two sums is secured illegally. It is not within the province of this Court to speculate or guess on an essential fact nor is the Court so skilled as to determine the expertness of the petitioner in being able to accrue such winnings and profits by legal betting at legally established race tracks, two of which are in operation in the immediate vicinity wherein the petitioner resides."

(B) *The Decision Below*

The Supreme Court of the State of New Jersey certified the instant case to itself (Appendix, p. 25) by-passing the Appellate Division, and reversed the grant of American citizenship, finding Reginelli's testimony incredible although the trial court had reached a contrary conclusion. In so doing the Supreme Court of New Jersey acknowledged that it considered Reginelli's record prior 1942 material and that it was reviewing findings of fact of the trial court and substituting its own for that of the County Court. (Appendix, p. 31).

Reasons For Granting the Writ

1. The Supreme Court of New Jersey reversed and revoked the citizenship granted petitioner by the County Court of Atlantic City by reviewing the evidence and reaching a different conclusion on the facts. No federal statute regulates state naturalization appeals. Under the practice in New Jersey as revealed by its judicial decisions, the Supreme Court of New Jersey, although an appellate tribunal, is authorized to reverse a lower court and enter new findings of fact. In New Jersey "appellate review of matters of fact, as well as law, is authorized." *Colacurcio Contracting Corp.* v. *Weiss*, 119 A. 2d 449, 453 (1955). Unlike federal appellate courts which are limited to setting aside District Court findings only where they are clearly erroneous, Rule 52(a) of the Rules of Civil Procedure; *United States* v. *United States Gypsum Co.*, 333 U.S. 364, 365 (1947); *Troyak* v. *Enos*, 204 F. 2d 536 (C.A. 7, 1953), the scope of state appellate review ranges from complete review of the evidence in some jurisdictions [2] to

[2] In addition to New Jersey, appellate review of the evidence is authorized in Michigan, *Bentley* v. *Caille*, 289 Mich. 74 (1939); Illinois, *Feucht* v. *Clarke*, 299 Ill. App. 477 (1939); and Washington, *Darnell et ux.* v. *Noel et ux.*, 34 Wash. 2d 428 (1949).

those in which review of questions of fact are prohibited.[3]

It thus appears that if the practice followed herein is sanctioned granting state appellate courts unlimited jurisdiction to review naturalization judgments, an alien naturalized in a state court in New Jersey is treated unlike one so naturalized in Connecticut and still different from anyone naturalized in a federal court. In each case the scope of appellate review is different. In each case citizenship is subject to revocation upon varying standards. In *Bindczyck* v. *Finucane*, 342 U.S. 77 at 85, 87 (1951), this Court observed that there were "wide and whimsical diversities revealed by the local laws of the forty-eight States in the power of their Courts to set aside local judgments" and that there was a "Congressional concern for unity in post-naturalization proceedings." This Court has likewise observed that where the policy of the law is so dominated by the sweep of a federal statute, legal relations which they affect must be governed by federal law having its sources in these statutes rather than by local law.[4] *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U.S. 239 (1942); *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U.S. 173 (1942); *Board of Commissioners* v. *United States*, 308 U.S. 343 (1939); *Royal Indemnity Co.* v. *United States*, 313 U.S. 289 (1941). It is not to be inferred therefore, that Congress in the enactment of the 1940 Nationality Act nor in its successor, the Immigration and Nationality Act of 1952[5] authorized state appellate courts to review citizenship decrees and denationalize those to whom citizenship had been awarded upon any different basis than that sanctioned by

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[3] *Farkas* v. *Halliwell*, 136 Conn. 440 (1950); *Kelly* v. *Dickerson*, 213 Ind. 624 (1938).

[4] "This uniformity requirement extends to the type of proof necessary for judgment." *Garrett* v. *Moore-McCormack Co., Inc.*, 317 U.S. 239 at 244 (1942).

[5] 8 U.S.C. 1421 continues the jurisdiction of state courts to naturalize aliens.

federal appellate tribunals. For a contrary conclusion would lead to the view that Congress has abandoned the constitutional mandate to establish "an uniform Rule of Naturalization."

The issue presented herein as to the power and scope of state appellate review of naturalization decrees is an important issue in the administration of our nationality laws and one of continuing concern under the Immigration and Nationality Act of 1952. Equally important is the necessity of deciding whether our naturalization laws are to have uniform application throughout the United States and whether such uniformity extends to the type of permissible appellate review.

2. Petitioner has been deprived of citizenship granted to him by the County Court of Atlantic City merely by reason of the fact that the Supreme Court of New Jersey reached a different conclusion upon the facts herein. Although the naturalization court exercises a wide discretion in the grant of citizenship, *Marcantonio* v. *United States*, 185 F. 2d 934, 937 (C.A. 4, 1950), the Court below gave no weight to such discretion exercised in favor of petitioner. Thus, petitioner has been deprived of citizenship even though clear, convincing and unequivocal evidence does not sanction such deprivation. Whether such standard of proof, required in denaturalization cases, *Schneiderman* v. *United States*, 320 U.S. 118 (1943); *Baumgartner* v. *United States*, 322 U.S. 665 (1944); *Gonzales* v. *Landon*, 350 U.S. 920 (1955), should have been applied by the Supreme Court of New Jersey is an issue which merits review by this Court. The effect of the decision below is revocation of citizenship, and revocation of citizenship under this Court's decisions requires such standard of proof.

3. The Court below acknowledged that the Second, Fifth

and Seventh Circuits have held that conduct outside the five year statutory period is immaterial in determining good moral character under the Nationality Act of 1940. *United States* v. *Clifford*, 89 F. 2d 184 (C.A. 2, 1937); *Petition of Zele*, 127 F. 2d 578 (C.A. 2, 1942); *United States* v. *Rubia*, 110 F. 2d 92 (C.A. 5, 1940); *Application of Murra*, 178 F. 2d 670 (C.A. 7, 1949). However, the Court below elected to resolve the conflict in circuits by following the contrary view which it believed was espoused by the Fourth and Eighth Circuits in *Marcantonio* v. *United States*, 185 F. 2d 934 (C.A. 4, 1950), and *Ralich* v. *United States*, 185 F. 2d 784 (C.A. 8, 1950). This conflict of circuits presents an important issue which should be determined by this Court. Not only are many naturalization cases still pending in the courts under the 1940 Nationality Act, but as this Court will observe from *United States* v. *Anastasio*, 226 F. 2d 912, 919 (C.A. 3, 1955), certiorari pending (No. 691, October, 1955 Term), many citizenship revocation cases have been instituted under the Justice Department's deportation and denaturalization program. These cases are likewise concerned with the issue as to whether a naturalized citizen was of good moral character during the statutory five year period prescribed by the 1940 Nationality Act where misconduct existed outside such period. Accordingly, it is desirable that the conflict presented by the circuits be resolved by this Court.

Conclusion

The decision below presents issues of importance in the administration of our naturalization laws and involves conflicting views of Circuit Courts of Appeal. It is therefore submitted that the petition for a writ of certiorari should be granted.

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